

REMARKS

Claims 14-29 are now pending in the application. The Examiner is respectfully requested to reconsider and withdraw the rejection in view of the remarks contained herein.

REJECTION UNDER 35 U.S.C. §103

Claims 14-29 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Geis et al. (DE 4326710) in view of Massey et al. (U.S. Pat. No. 5,866,647). This rejection is respectfully traversed.

Applicant submits herewith a "machine translation" of DE 4326710 obtained from esp@cenet which is attached hereto at TAB A.

The Examiner acknowledges that Geis et al. do not disclose a wrapping bush that is formed of reinforced plastic and cites Massey et al. as disclosing a polymeric based composite bearing which is formed of reinforced thermoplastic material. The Examiner states that "it would have been obvious to one having ordinary skill in the art at the time of the invention to modify the automatic tensioner of Geis et al., with the reinforced thermoplastic material of Massey et al. to improve the strength and friction properties of the wrapping bush."

Applicant notes that Massey et al. relates to a polymeric based composite bearing of the type that is configured to support a rotating shaft in an engine block. Applicant submits that design criteria for supporting a rotating shaft in an engine block are different from the design criteria for distributing load between the coils of a helical coil spring and a spring sleeve in a tensioner and that one of ordinary skill in the art would not have been motivated to modify the wrapping bush of Geis et al. in view of the

polymeric based composite bearing of Massey et al. Exemplary considerations for a shaft spinning within the bearing of Massey et al. might include friction/lubricity and the effects of heat on the material of the bearing, while exemplary considerations for the wrapping bush might include the ability to distribute large loads that are input to the wrapping bush over a relatively small surface area (i.e., the line of contact where the inside diameter of the coils of the torsion spring contact the outer surface of the wrapping bush) and the ability of the wrapping bush to maintain its shape.

Applicant notes that it is wholly improper to simply combine elements of Geis et al. and Massey et al. in this manner. In this regard, Applicant notes that the Supreme Court has stated that “[a]s is clear from cases such as *Adams*, a patent composed of several elements is not proved obvious merely by demonstrating that each of its elements was, independently, known in the prior art.” *KSR Int’l v. Teleflex Inc.*, 127 S.Ct. 1727, 82 USPQ2d 1385, 1396 (2007). Moreover, in discussing the review of a determination of obviousness, the Supreme Court quoted from *In re Kahn* stating that “rejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.” *Id.* Applicant notes, however, that the Examiner has stated that “it would have been obvious to one having ordinary skill in the art at the time of the invention to modify the automatic tensioner of Geis et al., with the reinforced thermoplastic material of Massey et al. to improve the strength and friction properties of the wrapping bush.”

Applicant notes that the wrapping bush of Geis et al. is described as being formed of aluminum. Moreover, the undersigned attorney is not aware of any general teaching in Massey et al. describing that a reinforced thermoplastic material may be

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substituted for aluminum to produce a wrapping bush with improved strength and friction properties. As such, it appears that the position of the Examiner must be based on the Examiner's personal knowledge. As the Examiner knows, the Examiner's ability to use personal knowledge is qualified by 37 C.F.R. 1.104(d)(2), which states:

When a rejection in an application is based on facts within the personal knowledge of an employee of the Office, the data shall be as specific as possible, and the reference must be supported, when called for by the applicant, by the affidavit of such employee, and such affidavit shall be subject to contradiction or explanation by the affidavits of the applicant or other persons.

Accordingly, Applicant respectfully requests that the Examiner provide an affidavit supporting the Examiner's position that the substitution of a reinforced thermoplastic material for aluminum in a wrapping bush provides improved strength and friction properties.

In view of the above-remarks, Applicant respectfully submits that the Office has not set forth a *prima facie* case of obviousness and respectfully requests reconsideration and withdrawal of the rejection of Claim 14 under 35 U.S.C. §103(a). Applicant notes that Claims 15 through 29 depend from Claim 14 and should overcome the rejection under 35 U.S.C. §103(a) for at least the reasons expressed for Claim 14.

Concerning Claim 19, Applicant notes that the claim specifies that the wrapping bush can accommodate both left-handed and right-handed helical springs. Applicant submits that Geis et al. does not teach or suggest a wrapping bush that is configured in this manner and moreover that the Examiner has acknowledged that Geis et al. does not teach or suggest such a wrapping bush. In this regard, the Examiner has stated that "one with ordinary skill in the art at the time of the invention would select the proper bush inclination based on the spring used in the automatic tensioner". Applicant submits, however, that the Examiner does not state that one of ordinary skill in the art

would have known or understood that they could have employed a wrapping bush that was formed with two different bush inclinations so that a single wrapping bush could be employed for both right-hand and left-hand helical springs. In view of the above remarks, Applicant submits that the combination of references cited by the Office does not present a *prima facie* case of obviousness as the combination of references does not teach or suggest each limitation of the claim as arranged in the claim. Accordingly, reconsideration and withdrawal of the rejection of Claim 19 under 35 U.S.C. §103(a) are respectfully requested.

Concerning Claim 20, Applicant notes that the claim depends from Claim 19 and should overcome the rejection under 35 U.S.C. §103(a) for at least the reasons set forth for Claim 20. Additionally, Claim 20 recites that the wrapping bush comprises inclines that correspond in one area to the course of a left-handed helical spring and in another area to the course of a right-handed helical spring. Applicant submits that Geis et al. does not teach or suggest a wrapping bush that is configured in this manner. The Examiner has stated that “one with ordinary skill in the art at the time of the invention would select the proper bush inclination based on the spring used in the automatic tensioner”. Applicant submits, however, that the Examiner does not state that one of ordinary skill in the art would have known or understood that they could have employed a wrapping bush that was formed with a first bush incline that conforms to right-handed helical springs and a second bush incline that conforms to left-handed helical springs. In view of the above remarks, Applicant submits that the combination of references cited by the Office does not present a *prima facie* case of obviousness as the combination of references does not teach or suggest each limitation of the claim as

arranged in the claim. Accordingly, reconsideration and withdrawal of the rejection of Claim 20 under 35 U.S.C. §103(a) are respectfully requested.

Concerning Claim 23 recites that "the wrapping bush on a free end thereof comprises a chamfered peripheral edge" and the originally filed specification indicates that the "free end 43" of the wrapping bush is an end of the wrapping bush that is opposite (or most distant from) the basic part (2). In contrast, the Examiner has stated that "Geis et al. discloses the wrapping bush (8) on a free end thereof comprises a chamfered peripheral edge (depicted in figure 1)." Applicant notes, however, that the chamfered edge depicted in the only figure of Geis et al. is disposed on an end of the spring bush (3) that is nearest the basic part (1) (i.e., the chamfered edge of Geis et al. is not disposed on the "free end" of the spring bush). In view of the above remarks, Applicant submits that the combination of references cited by the Office does not present a *prima facie* case of obviousness as the combination of references does not teach or suggest each limitation of the claim as arranged in the claim. Accordingly, reconsideration and withdrawal of the rejection of Claim 23 under 35 U.S.C. §103(a) are respectfully requested.

Concerning Claim 24, Applicant notes that the Examiner has stated that Geis et al. discloses the subject matter in the body of the claim, but has not explained what he believes to be depicted in figure 1 of Geis et al. Applicant submits that the Examiner has the burden of proving that Geis et al. discloses the subject matter of Claim 24 and that the conclusory statements of the Examiner do not meet this burden. See, e.g., *KSR Int'l v. Teleflex Inc.*, 127 S.Ct. 1727, 82 USPQ2d 1385, 1396 (2007) (rejections on obviousness grounds cannot be sustained by mere conclusory statements).

Accordingly, reconsideration and withdrawal of the rejection of Claim 24 under 35 U.S.C. §103(a) are respectfully requested.

Concerning Claim 28, Applicant notes that the Examiner has stated that Geis et al. discloses the subject matter in the body of the claim, but has not explained what he believes to be depicted in figure 1 of Geis et al. Applicant submits that the Examiner has the burden of proving that Geis et al. discloses the subject matter of Claim 28 and that the conclusory statements of the Examiner do not meet this burden. See, e.g., *KSR Int'l v. Teleflex Inc.*, 127 S.Ct. 1727, 82 USPQ2d 1385, 1396 (2007) (rejections on obviousness grounds cannot be sustained by mere conclusory statements). Accordingly, reconsideration and withdrawal of the rejection of Claim 28 under 35 U.S.C. §103(a) are respectfully requested.

CONCLUSION

It is believed that all of the stated grounds of rejection have been properly traversed, accommodated, or rendered moot. Applicant therefore respectfully requests that the Examiner reconsider and withdraw all presently outstanding rejections. It is believed that a full and complete response has been made to the outstanding Office Action and the present application is in condition for allowance. Thus, prompt and favorable consideration of this amendment is respectfully requested.

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If the Examiner believes that personal communication will expedite prosecution of this application, the Examiner is invited to telephone the undersigned at (248) 641-1600.

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Respectfully submitted,

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